Supreme Court, U.S.
FILED

02 1357 MAR 10 2003

No. _____

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

LOCKHEED INFORMATION MANAGEMENT SERVICES INC. and PRWT,

Petitioners,

—v.—

TOM STANLEY and DAROLD SHIRWO,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT, DIVISION 1

PETITION FOR A WRIT OF CERTIORARI

PATRICK MCADAM
Counsel of Record
IVERSON, YOAKUM, PAPIANO
& HATCH
624 South Grand Avenue, 27th Floor
Los Angeles, California 90017
(213) 624-7444

Counsel for Petitioners

March 2003

71PP

QUESTIONS PRESENTED

(1) Whether petitioners presented the California Court of Appeal (Second Appellate District, Division One) with a cognizable claim that the Superior Court of the County of Los Angeles abused its discretion under 42 U.S.C. § 1988(b) in awarding $119,031.25 of attorneys' fees to respondents by relying on its erroneous application of the doctrine of "law of the case."

(2) Whether the "different issues" rule of procedure laid down by the Supreme Court of California in *Rooney v. Vermont Investment Corp.*, 10 Cal.3d 351 [110 Cal.Rptr. 353, 515 P.2d 297] (1973) was not an adequate and independent state procedural ground to bar appellate review of petitioners' cognizable claim.

RULE 29.6 STATEMENT

Petitioner Lockheed Information Management Services, Inc. is wholly-owned by Affiliated Computer Services, Inc., which is a publicly held company. Petitioner PRWT has no parent corporation, and no publicly held company owns 10 percent or more of PRWT's stock.

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED	i
RULE 29.6 STATEMENT	ii
TABLE OF AUTHORITIES	iv
CITATIONS OF DECISIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS	1
STATEMENT	2
REASONS FOR GRANTING PETITION	8
I. Novel Application of California's "Different Issues" Rule Thwarted Appellate Review of Fee Amount Awarded Respondents	8
II. California State Trial Court Decided Fee Award Amount by Relying on Its Prejudicially Erroneous Application of "Law of the Case"	9
CONCLUSION	10

TABLE OF AUTHORITIES

Federal Cases PAGE

Conn v. Gabbert, 526 U.S. 286 (1999)..... *passim*

Ford v. Georgia, 498 U.S. 411 (1991) 8, 9

Hanrahan v. Hampton, 446 U.S. 754 (1980)..... 9, 10

Hensley v. Eckerhart, 461 U.S. 424 (1983)..... 6

California Cases

Carlson v. Eassa, 54 Cal.App.4th 684 [62 Cal.Rptr.2d 884] (1997)..... 9

In re Marriage of Lloyd, 55 Cal.App.4th 216 [64 Cal.Rptr.2d 37] (1997)..... 9

Lakin v. Watkins Associated Industries, 6 Cal.4th 644 [25 Cal.Rptr.2d 109, 863 P.2d 179] (1993) 7, 8

McConnell v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 176 Cal.App.3d 480 [222 Cal.Rptr. 228] (1985)..... 8

Rooney v. Vermont Investment Corp., 10 Cal.3d 351 [110 Cal.Rptr. 353, 515 P.2d 297] (1973) 7

Constitutional and Statutory Provisions:

U.S. Const. Art. VI, cl.2. ..... 1, 7

U.S. Const. Amendment XIV, Sec. 1, cl.2. ..... *passim*

28 U.S.C. § 1257(a)..... 1

PAGE

42 U.S.C. § 1983 ..... 3, 4

42 U.S.C. § 1988(b) ..... *passim*

California Vehicle Code § 40200.4
Added Ch. 939, Stats. 1986.
Effective January 1, 1987 4

California Vehicle Code § 40200.5
Added Ch. 939, Stats. 1986.
Effective January 1, 1987 4

California Vehicle Code § 40215
Added Ch. 852, Stats. 1987.
Effective January 1, 1988 4

Treatise

9 Witkin, Cal. Procedure (4th ed. 1997)
Appeal § 138, pp. 204-205 8

CITATIONS OF DECISIONS BELOW

Tom Stanley et al. v. Lockheed Information Management Services et al., 2002 Cal. LEXIS 8484 (California Supreme Court, December 11, 2002). Appendix 1a.

Tom Stanley et al. v. Lockheed Information Management Services, et al., 2002 Cal. App. Unpub. LEXIS 9015 (California Court of Appeal, Second Appellate District, Division One, September 26, 2002). Appendix 3a-8a.

No citations exist for the decisions of the California Superior Court for the County of Los Angeles.

JURISDICTION

The Court of Appeal entered judgment on September 26, 2002. Appendix 3a. On October 26, 2002, the court denied petitioners' timely request for rehearing. Appendix 2a. The California Supreme Court denied petitioners' petition for review on December 11, 2002. Appendix 1a. Accordingly, petitioners invoke the jurisdiction of this Court under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Supremacy Clause of the Constitution provides, in relevant part, the following: "[T]he Laws of the United States . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. Art. VI, cl. 2.

The Due Process Clause of the Fourteenth Amendment to the Constitution provides, in relevant part, the following: "[N]or shall any State deprive any person of . . .

liberty, or property without due process of law. . . ." U.S. Const. Amendment XIV, Sec. 1, cl. 2.

The Appendix has the relevant provisions of the following statutes:

(a) Section 1983 of Title 42, United States Code, as amended effective December 29, 1979, by Pub.L. No. 96-170, § 1, 93 Stat. 1284 (Appendix 47a);

(b) Section 1988(b) of Title 42, United States Code, as amended effective September 22, 2000, Pub. L. 106-274, §4(d), 114 Stat. 804 (Appendix 48a);

(c) Section 40200.4 of the California Vehicle Code, added Ch. 939, Stats. 1986, effective January 1, 1987 (Appendix 49a);

(d) Section 40200.5 of the California Vehicle Code, added Ch. 939, Stats. 1986, effective January 1, 1987 (Appendix 50a);

(e) Section 40215 of the California Vehicle Code, as amended ch. 852, stat. 1987, effective January 1, 1988. (Appendix 51a).

STATEMENT

Respondents are two lawyers (licensed to practice law in California) who, in 1991 and 1992, used the fictitious name "Parking Ticket Defenders" when representing persons who wanted to contest parking tickets issued by the City of Los Angeles. Respondents' employment was at-will and they used a form contingency fee agreement for these clients. Appendix 31a.

In September 1992, respondents sued petitioners, and claimed that petitioners (a) directly contacted respondents' clients, and (b) rejected respondents' parking ticket trial setting requests, to dissuade respondents and

their clients from contesting parking tickets. The suit went on to a jury trial (in 1995) and, eventually, a non-suit judgment. In February 1998, the Court of Appeal (Second Appellate District, Division One) reversed the judgment as to petitioners. Appendix 33a.

After the Court of Appeal's February 1998 decision, this Court decided *Conn v. Gabbert*, 526 U.S. 286 (1999), which held, essentially, that although the liberty component of the Due Process Clause of the Fourteenth Amendment includes the right to practice law, the Due Process Clause protects that right from only a complete prohibition or exclusion from the practice. *Id.* at 291-292. Moreover, the property component excludes at-will employment (*ibid.*), and lawyers cannot rest a claim for damages under 42 U.S.C. § 1983 on the legal rights or interests of third parties. *Id.* at 292-293.

In August 2000, the Superior Court conducted a retrial after respondents abandoned their contention that petitioners had directly contacted respondents' clients.[1] Accordingly, respondents based the retrial only on petitioners' rejections of respondents' trial setting requests. Appendix. More specifically, from late November 1991 until early January 1992, when respondents' office administrator would go to the City of Los Angeles' Parking Violations Bureau to request trial settings for respondents' parking ticket clients, petitioners rejected the requests that did not have the clients' original parking tickets.[2] Respondents introduced evidence to show

---

[1] The Court of Appeal's February 1998 opinion assumed that petitioners had communicated directly the clients. Appendix 44a. Indeed, respondents introduced no evidence at the first trial that supported the Court of Appeal's assumption. The Court of Appeal had, therefore, relied on a false allegation in respondents' complaint.

[2] The Parking Violations Bureau had several walk-in locations where persons issued parking tickets could, until 1993, request trial

that the rejections caused parking ticket clients to fire respondents and, as a result, respondents lost income from that employment.

After the close of evidence, the jury decided the state law claim of intentional interference with prospective economic advantage, and awarded $66,000 in damages to respondents. The Superior Court decided respondents' 42 U.S.C. § 1983 claim, which respondents based on their rights under Due Process Clause of the Fourteenth Amendment. Appendix 24a.

Respondents argued, in essence, that the Court of Appeal's February 1998 opinion was "law of the case" regarding the Due Process claim. (Plaintiffs' Brief Re Civil Rights Violation, pages one through 4). Petitioners argued, in essence, that *Conn v. Gabbert,* not the Court of Appeal's opinion, is "law of the case" and, therefore, respondents failed to establish the Due Process claim. (Lockheed IMS's and PRWT's Opening Brief Re Fourteenth Amendment Due Process Clause, pages one through seven; Defendants Lockheed IMS's and PRWT's Reply to Plaintiffs' Brief, pages one through 5).

After considering the parties' contentions and additional briefing (Defendants Lockheed IMS's and PRWT's

---

settings in the Los Angeles Municipal Court. (After 1993, the City administratively adjudicated the parking tickets.) The Parking Violations Bureau began processing parking tickets after the County of Los Angeles, pursuant to California Vehicle Code § 40200.4 (Appendix 49a), elected to transfer the processing functions done by the Los Angeles Municipal Court to the City. In turn, California Vehicle Code § 40200.5 (Appendix 50a) allowed the City to enter contracts with private entities (e.g., the petitioners) to do the processing, which included the authority, under California Vehicle Code § 40215 (Appendix 51a), to set trial dates as specified by the Los Angeles Municipal Court. Accordingly, during the relevant period, the petitioners operated the Parking Violations Bureau pursuant to a contract with the City.

Supplemental Reply Brief), the Superior Court stated that if allowed to write on a open slate, it would have concluded, citing *Conn v. Gabbert*, *supra*, that respondents failed to establish a liberty or property interest. Appendix 25a-27a. Indeed, no factual dispute existed that the rejections of the trial setting requests did not prohibit respondents from practicing law; that petitioners accepted respondents' trial setting requests whenever respondents' office administrator presented original parking tickets; and that respondents' employment arrangement with their parking ticket clients was all at-will. (Lockheed IMS's and PRWT's Opening Brief Re Due Process Clause, pages two through six.)

Nevertheless, the Superior Court concluded that the Court of Appeal's February 1998 decision, and not *Conn v. Gabbert*, was "law of the case." Appendix 25a. Accordingly, the Superior Court refused to follow *Conn v. Gabbert* in entering judgment against petitioners. Appendix 21a.

Respondents filed a motion for attorney fees under 42 U.S.C. § 1988(b). (Motion for Attorney Fees (42 USC 1988), dated May 17, 2001). They requested $119,031.25. *Ibid.* Next they filed a notice of appeal from the underlying judgment. (Notice of Appeal, filed May 25, 2001).

In response, petitioners filed the following with the Court of Appeal: (1) a cross-appeal (Defendants' Lockheed IMS and PRWT's Notice of Cross-Appeal, filed June 21, 2001), and (2) a motion to dismiss the appeal because respondents filed their notice too late. (Notice of Motion and Motion to Dismiss Appeal, filed June 29, 2001).

With the Superior Court, petitioners filed opposition to respondents' fee motion. (Defendants Lockheed IMS and PRWT's Memorandum of Points And Authorities in

Opposition to Plaintiffs' "Motion for Attorney Fees (42 USC 1988), filed June 13, 2001). Petitioners contended, in essence, the following (1) under *Conn v. Gabbert, supra,* respondents failed to establish a liberty or property interest, and, therefore, (2) the only reasonable amount of fees to award respondents is no fee. *Ibid.* pages one through seven.

On June 22, 2001, the Superior Court granted the fee motion, and awarded $119,031.25 in attorneys' fees to respondents. Appendix 15a. Respondents prepared a proposed order, and petitioners objected to it (Defendants Lockheed IMS's and PRWT's Objections to '[Proposed] Order Re Attorney Fees, filed July 3, 2001), arguing, in essence, that the proposed order failed to comply with *Hensley v. Eckerhart,* 461 U.S. 424, 436-437 (1983) (order must explain the reasons for the fee award). On July 20, 2001, after making a handwritten modification, the Superior Court adopted and entered the post judgment order prepared by respondents. Appendix 12a. A few days later, the Court of Appeal granted petitioners' motion to dismiss the appeal and, therefore, the Court of Appeal dismissed perforce petitioners' cross-appeal. Appendix 10a.

Petitioners timely appealed the Superior Court's post judgment order (Defendants And Appellants Lockheed IMS and PRWT's Notice of Appeal, filed January 7, 2002), arguing in their opening brief, in essence, that the Superior Court abused its discretion by awarding $119,031.25 of attorneys' fees to respondents based on the Superior Court's erroneous application of "law of the case." (Appellants' Opening Brief at pages ten through twelve). In reply, respondents argued, in essence, the following: (a) pursuant to California's "different issues" rule, the Court of Appeal should dismiss petitioners'

appeal,[3] and (b) respondents had vindicated their Due Process Clause rights because the Court of Appeal's 1998 decision was "law of the case," and if not, authority exists that recognizes a constitutional right to legal employment. (Respondents' Reply Brief, filed June 25, 2002, pages 4 through 10).

In response, petitioners argued, in essence, the following: (1) federal law preempted the application of California's "different issues" rule in appeals from § 1988(b) post judgment orders, and (2) respondents failed to vindicate their Due Process Clause rights under the law this Court established in *Conn v. Gabbert, supra.* (Appellants' Reply Brief pages one through nine).

The Court of Appeal, without reviewing petitioners' issues, affirmed the post judgment order by applying California's "different issues" rule to say, in essence, "these issues are not properly before us." Appendix 7a-8a. Accordingly, petitioners filed a timely rehearing petition, arguing that the Federal Constitution's Supremacy Clause barred the Court of Appeal's application of California's "different issues" rule. (Appellants' Petition for Rehearing pages one through 4.) The Court of Appeal denied a rehearing. Appendix 2a.

Next, petitioners filed a timely review petition in the California Supreme Court, and asked for a review of the following issue: "Do appeals from post judgment orders under 42 U.S.C. § 1988(b) satisfy California's different issues requirement (see, e.g. *Lakin v. Watkins Associated*

---

[3] Although respondents did not cite the decision, in *Rooney v. Vermont Investment Corp.*, 10 Cal.3d 351 [110 Cal.Rptr. 353, 515 P.2d 297] (1973), the California Supreme Court established the rule (we paraphrase *Lakin v. Watkins Associated Industries*, 6 Cal.4th 644[25 Cal.Rptr.2d 109, 863 P.2d 179] (1993)) "that the issues raised by the appeal from (a post judgment) order must be different from those arising from an appeal from the judgment." *Id.* 6 Cal.4th at 651.

Industries (1993) 6 Cal. 9th 644, 651) when the appeals raise issues involving the degree of success obtained by the prevailing parties?" (Petition for Review of Decision of the Court of Appeal Second Appellate District Division One Case No. B155735, pages one through ten.) The California Supreme Court, however, denied a review. Appendix 1a. Accordingly, petitioners filed this petition for writ of certiorari.

REASONS FOR GRANTING THE PETITION

I. Novel Application of California's "Different Issues" Rule Thwarted Appellate Review of Fee Amount Awarded Respondents

The Court of Appeal assumed that California's "different issues" rule allowed it to affirm the post judgment fee award under § 1988(b) without reviewing the merits of the issues petitioners raised to challenge the fee amount. Appendix 7a-8a. Yet the Court of Appeal's assumption is subject to this Court's standards for assessing the inadequacy of California's "different issues" rule to bar consideration of those issues. Cf. *Ford v. Georgia*, 498 U.S. 411, 423 (1991).

The Court of Appeal's opinion does not cite any authority involving appeals from § 1988(b) post judgment orders. For example, the opinion cited *McConnell v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 176 Cal.App.3d 480 [222 Cal. Rptr. 228] (1985). Yet that case involved an appeal from a post judgment order in a class action based solely on an alleged violation of the California Usury Law. *Id.* at 484-486.

The Court of Appeal's opinion also cited 9 Witkin, Cal. Procedure (4th ed. 1997) *Appeal* § 138, pp. 204-205 (Appendix 5), which cites *McConnell, supra,* and *Lakin v. Watkins Associated Industries, supra,* 6 Cal.4th 644.

Still, *Lakin* involved a post judgment order under a California pretrial discovery statute (*id.* at 651), and *Lakin* cited no case involving a post judgment order issued pursuant to federal law. *Id.* at 651-656. To be sure, Witkin's 2002 Supplement for volume nine, *Appeal* § 138, at page 54 cites *In re Marriage of Lloyd*, 55 Cal.App.4th 216, 220 [64 Cal. Rptr. 2d 37] (1997) and *Carlson v. Eassa*, 54 Cal.App.4th 684, 691 [62 Cal. Rptr. 2d 884] (1997). Yet *Lloyd* involved an order modifying the custodial arrangements for two minors (*Lloyd, supra,* 55 Cal.App.4th at 218219), and *Carlson* involved an order under a California statute. *Carlson, supra,* 54 Cal.App.4th at 687.

Accordingly, the Court of Appeal's use of California's "different issues" rule "does not even remotely satisfy the requirements . . . that an adequate and independent state procedural bar . . . must have been 'firmly established and regularly followed' by the time" the Court of Appeal applied the "different issues" rule in this case. Quoting *Ford, supra*, at 424.

II. California State Trial Court Decided Fee Award Amount by Relying on It's Prejudicially Erroneous Application of "Law of the Case"

The record clearly shoes that in reaching its decision on the amount of fees, the Superior Court abdicated its § 1988(b) discretion to the Court of Appeal's February 1998 opinion. For example, the Superior Court said as follows: "In light of the Court of Appeal's (February 1998) Ruling, the (respondents' fee) motion is granted." Appendix 15a. Concisely put, the February 1998 decision is an interlocutory ruling (see, e.g. Appendix 33a) that provides no compulsion to award any attorneys' fees to respondents and surely not $119,031.25. Indeed, *Hanrahan v. Hampton*, 446 U.S. 754 (1980) supports peti-

tioners' contention and they cited the following to the Court of Appeal: "The Court of Appeals held only that the respondents were entitled to a trial of their cause. As is true of other procedural or evidentiary rulings . . . these determinations were themselves not matters on which a party could 'prevail' for purposes of shifting his counsel fees to the opposing party under § 1988. . . ." *Id.* at 759. (Appellants Opening Brief, page 10; Appellants' Reply Brief, pages one and two.).

The Superior Court's error is prejudicial to petitioners because without the error the Superior Court would either award no fee to respondents under § 1988(b), or a substantially lower fee, for failing to establish a liberty or property interest under the law established by *Conn v. Gabbert*. Compare Appendix 27a.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

PATRICK MCADAM
Counsel of Record
IVERSON, YOAKUM, PAPIANO & HATCH
624 South Grand, 27th Floor
Los Angeles, California 90017
(213) 624-7444

Counsel for Petitioners

March 2003

APPENDIX

TABLE OF CONTENTS

PAGE

California Supreme Court, *en banc*, denial of petition for review (December 11, 2002).. 1a

California Court of Appeal (Second Appellate District, Division 1) denial of petition for rehearing (October 16, 2002)..... 2a

Opinion of California Court of Appeal (Second Appellate District, Division 1) (September 26, 2002) 3a

California Court of Appeal (Second Appellate District, Division 1) ORDER dismissing appeal and cross-appeal taken from the judgment (July 25, 2001)..... 9a

California Superior Court for the County of Los Angeles "ORDER RE ATTORNEY FEES" (July 20, 2001)..... 11a

California Superior Court for the County of Los Angeles Minutes Entered June 22, 2001 granting motion for attorneys' fees 14a

Judgment of California Superior Court for the County of Los Angeles (March 21, 2001).... 16a

California Superior Court for the County of Los Angeles Minutes Entered January 26, 2001 – "COURT ORDER RE PLAINTIFFS' CIVIL RIGHTS CAUSE OF ACTION"..... 22a

PAGE

California Superior Court for the County of Los Angeles Minutes entered August 30, 2000..... 29a

Opinion of California Court of Appeal (Second Appellate District, Division 1) (February 25, 1998) reversing previous judgment..... 33a

Section 1983 of Title 42, United States Code, as amended effective December 29, 1979, by Pub. L. No. 96-170, §1, 93 Stat. 1284 .... 47a

Section 1988(b) of Title 42, United States Code, as amended effective September 22, 2000, Pub. L. 106-274, §4(d), 114 Stat. 804..... 48a

Section 40200.4 of the California Vehicle Code, added Ch. 939, Stats. 1986, effective January 1, 1987..... 49a

Section 40200.5 of the California Vehicle Code, added Ch. 939, Stats. 1986, effective January 1, 1987..... 50a

Section 40215 of the California Vehicle Code, as amended Ch. 852, Stats. 1987, effective January 1, 1988..... 51a

Court of Appeal, Second Appellate District,
Division One - No. B155735

S111226

IN THE SUPREME COURT OF CALIFORNIA

Filed December 11, 2002

En Banc

TOM STANLEY *et al.*,

Plaintiffs and Respondents,

—v.—

LOCKHEED INFORMATION
MANAGEMENT SERVICES *et al.*,

Defendants and Appellants.

Petition for review DENIED.

GEORGE
Chief Justice

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION: 1

DATE: October 16, 2002

Patrick McAdam
Iverson, Yoakum, Papiano & Hatch
One Wilshire Bldg.
624 South Grand Ave. - 27th Floor
Los Angeles, CA 90017-3328

TOM STANLEY, *et al.*

—v.—

LOCKHEED, *et al.*

B155735

Los Angeles County No. SC019970

THE COURT:

Petition for rehearing is denied.

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

B155735

(Super. Ct. No. SC019970)

Filed September 26, 2002

TOM STANLEY *et al.*,

Plaintiffs and Respondents,

—v.—

LOCKHEED INFORMATION
MANAGEMENT SERVICES *et al.*,

Defendants and Appellants.

APPEAL from an order of the Superior Court of Los Angeles County, Lorna Parnell, Judge. Affirmed.

Iverson, Yoakum, Papiano & Hatch and Patrick McAdam for Defendants and Appellants.

Charles J. Fleishman for Plaintiffs and Respondents.

INTRODUCTION

Defendants Lockheed Information Management Services and PRWT appeal from an order awarding attorney's fees to plaintiffs Tom Stanley and Darold Shirwo under 42 United States Code section 1988(b). Defendants contend the award was an abuse of discretion, in that it was based upon an error of law. We affirm the order.

PROCEDURAL BACKGROUND

Defendants originally obtained a judgment of nonsuit in this action. Plaintiffs appealed from the judgment. This court issued an opinion reversing the judgment, stating that the case was "remanded with each of appellants' two causes of action reinstated." (*Stanley v. Lockheed* (Feb. 25, 1993) B100699, "*Stanley*.")

The case went to trial on the two causes of action: interference with prospective economic advantage and violation of civil rights (42 U.S.C. § 1983). A jury found liability for interference with prospective economic advantage and awarded damages in the amount of $66,000.

The trial court thereafter considered the question of civil rights violation, whether defendants' actions violated plaintiffs' liberty or property interests protected by the United States Constitution. In its ruling, the court stated: "Under the 'law of the case' doctrine, this Court is bound by the legal determinations of the Court of Appeal." It noted that in *Stanley*, this court had "reinstated . . . EACH of plaintiffs' two causes of action. . . . The nature of the defendants' activities which provided the basis for plaintiffs' lawsuit are described with some detail in the Court of Appeal opinion. The Court of

Appeal opinion also discusses in some detail the elements of the cause of action for intentional interference with prospective economic advantage. However, unfortunately, the Court of Appeal opinion does not discuss or analyze the separate elements of the civil rights cause of action. But, the non-suit having been found by the Court of Appeal to have been granted erroneously by the original trial judge, the matter was reinstated and remanded. This Court (which was not the original trial court and did not have the benefit of handling the case from the beginning) is thus placed in the awkward position of trying to interpret the meaning and effect of the Court of Appeal opinion. As the Court reads and interprets the Court of Appeal opinion, this Court feels bound by the law of the case doctrine to hold that plaintiffs have established their civil rights cause of action. This Court does so hold with some considerable trepidation."

The trial court went on to state that, if it "were writing on an open slate," it "would hold that the injury to the plaintiffs which was caused by the actions of . . . defendants was not to a fundamental 'liberty' or 'property' interest protected by the Fourteenth Amendment to the United States Constitution. Thus, plaintiffs would not prevail on their civil rights cause of action, although they would still obviously prevail on their cause of action for intentional interference with prospective economic advantage." The significance of this was that, had plaintiffs prevailed only on their intentional interference with economic advantage cause of action, they would not be entitled to attorney's fees. Having prevailed on their civil rights cause of action, plaintiffs were entitled to attorney's fees.

Judgment in favor of plaintiffs was entered on March 21, 2001 in the amount of $66,000 plus costs. The following day, plaintiffs filed a motion for attorney's fees

under 42 United States Code section 1988(b). Plaintiffs then filed a notice of appeal from the judgment on May 25, 2001, and defendants then filed a notice of cross-appeal.

On June 22, 2001, the trial court granted plaintiffs' motion for attorney's fees on the ground they were the prevailing parties and therefore entitled to recover attorney's fees. It awarded them $119,031.25 in attorney's fees. The order awarding attorney's fees was filed on July 20, 2001. In the order, the trial court explained that "[t]he reason for such an award and order have been set forth by this court previously."

Defendants moved to dismiss plaintiffs' appeal from the judgment on the ground the notice of appeal was untimely. On July 25, 2001, we dismissed both plaintiffs' appeal and defendants' cross-appeal. Defendants then filed the instant appeal from the order awarding attorney's fees.

DISCUSSION

Defendants claim that the trial court made an error of law when it awarded judgment to plaintiffs on their civil rights violation claim, believing the judgment in their favor was mandated by this court's prior opinion in *Stanley*. They contend that, inasmuch as the judgment was based on an error of law, the award of attorney's fees was an abuse of discretion. (Cf *Richards, Watson & Gershon v. King* (1995) 39 Cal.App.4th 1176, 1180; *Gardner v. Superior Court* (1986) 182 Cal.App.3d 335, 339.)

Plaintiffs counter that defendants' appeal is untimely and should be dismissed. They assert that since defendants are raising on appeal from the order awarding attorney's fees the same issues as they would have raised

on appeal from the judgment itself, the order is not separately appealable. (*McConnell v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1985) 176 Cal.App.3d 480, 487; 9 Witkin, Cal. Procedure (4th ed. 1997) § 138, pp. 204-205.) If the appeal is taken from the judgment, it is untimely and must be dismissed for lack of jurisdiction. (*Casado v. Sedgwick, Detert, Moran & Arnold* (1994) 22 Cal.App.4th 1284, 1286.)

It is well established that a postjudgment order awarding attorney's fees is separately appealable. (Code Civ. Proc. § 904.1, subd. (a)(2).) As plaintiffs, point out, however, on appeal from the order, defendants cannot raise any issues which they could have, but did not, raise on appeal from the judgment itself. (*McConnell v. Merrill Lynch, Pierce, Fenner & Smith, Inc., supra,* 176 Cal.App.3d at p. 487; 9 Witkin, Cal. Procedure, *supra*, § 138, pp. 204-205.) This means that they cannot challenge the propriety of the judgment. (See *McConnell, supra,* at p. 487.)

Thus, in reviewing the order awarding attorney's fees to plaintiffs, we start with the fact that plaintiffs obtained a judgment in their favor on their section 1983 cause of action, and that judgment is final, not subject to attack. Section 1988(b) of 42 United States Code provides that in any action under section 1983, "the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs. . . . Plaintiffs being the prevailing parties in the section 1983 action, the trial court had discretion to award them attorney's fees.

Defendants make no contentions with respect to the award of attorney's fees that do not raise issues concerning the propriety of the judgment, issues which could have been raised on appeal from the judgment but which were not. Therefore these issues are not properly

before us. (*McConnell v. Merrill Lynch, Pierce, Fenner & Smith, Inc. supra*, 176 Cal.App.3d at p. 487; 9 Witkin, Cal. Procedure, *supra*, § 138.1 pp. 204-205.) Absent any cognizable contentions on appeal, any challenge to the award must be deemed waived. (Cf *Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545-546.)

The order is affirmed.

SPENCER, P.J.

We concur: ORTEGA, J.
VOGEL (MIRIAM A.), J.

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

Case No. B150801

(LASC No. SC 019970)
(Lorna Parnell, Judge)

Filed July 25, 2001

TOM STANLEY and DAROLD SHIRWO,

Plaintiffs, Appellants, and Cross-Respondents,

—vs.—

LOCKHEED IMS and PRWT,

Defendants, Respondents, and Cross-Appellants.

ORDER

THE COURT:

The motion of defendants, respondents, and cross-appellants Lockheed IMS and PRWT for an order dismissing the appeal of plaintiffs, appellants, and cross-respondents Tom Stanley and Darold Shirwo from the judgment of the Superior Court, having been filed, read, and considered,

It IS ORDERED that the appeal of plaintiffs, appellants, and cross-respondents Tom Stanley and Darold Shirwo be, and is hereby, dismissed with prejudice costs awarded to defendants, respondents, and cross-appellants Lockheed IMS and PRWT, and, further, that the cross-appeal of defendants, respondents, and cross-appellants Lockheed IMS and PRWT is hereby dismissed.

DATED: July 25, 2001

SPENCER, P.J.
PRESIDING JUSTICE
ORTEGA, J.

CHARLES J. FLEISHMAN
Bar # 46405
A Professional Corporation
8383 Wilshire Blvd., Suite 1030
Beverly Hills, California 90211-2495
Telephone: (323) 653-9772

Attorney for Plaintiff

SUPERIOR COURT OF THE
STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

NO. SC 019970

Filed July 20, 2001

TOM STANLEY and DAROLD SHIRWO,

Plaintiff,

—VS.—

LOCKHEED, *et al.*,

Defendants.

~~[PROPOSED]~~ ORDER RE ATTORNEY FEES

The PLAINTIFFS' Motion for Attorney Fees came regularly for hearing on June 22, 2001 in Department "J" the above entitled court, the Honorable Lorna Parnell, Judge, presiding; the plaintiffs were represented by Charles J. Fleishman and the defendants by Patrick McAdam of the law firm of Iverson, Yoakum, Papiano & Hatch; the matter was briefed, argued and submitted; Court having considered the positions of the parties and the law orders as follows:

IT IS ORDERED Defendants Lockheed Information Management Services Company and PRWT are, pursuant to 42 USC 1988, to pay plaintiffs for reasonable attorney fees of $119,031.25. [The reason for such an award and Order have been set forth by this Court previously.] (Handwritten)

DATED: July 20, 2001

LORNA PARNELL
Honorable Lorna Parnell
Judge of the Superior Court

PROOF OF SERVICE BY MAIL

I am a resident of Los Angeles County. I am over the age of 18 years and I am a member of the State Bar. My business address is 8383 Wilshire Blvd., Suite 1030, Beverly Hills CA 90211.

On June 28, 2001, I served the within [PROPOSED] ORDER RE ATTORNEY FEES on the parties of interest in said action by placing a true copy thereof enclosed in a sealed envelope with the postage thereon fully prepaid in the United States mail at Beverly Hills, California addressed as follows:

Patrick McAdam
Iverson, Yoakum, Papiano & Hatch
624 South Grand Ave., 27th Floor
Los Angeles, CA 90017-3328

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 28, 2001, at Beverly Hills, California.

CHARLES J. FLEISHMAN
Charles J. Fleishman

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

DATE: June 22, 2001

HONORABLE LORNA PARNELL, JUDGE

NONE, Deputy Sheriff

DEPT. WEJ

G. TAPANES, DEPUTY CLERK

V. DARIO, CSL/Ct Asst.,
ELECTRONIC RECORDING MONITOR

R. PITLUK #10239, Reporter

9:00 am

SC019970

TOM STANLEY and DAROLD SHIRWO

—vs—

LOCKHEED IMS *et. al.*

Plaintiff Counsel CHARLES J. FLEISHMAN (X)

Defendant Counsel PATRICK MCADAM (X)

NATURE OF PROCEEDINGS:

PLAINTIFFS' (TOM STANLEY AND DAROLD SHIRWO) MOTION FOR ATTORNEY FEES PURSUANT TO 42 USC 1988

Matter is called for hearing.

In light of the Court of Appeal Ruling in this action, the motion is granted. The Court finds the plaintiffs are the prevailing parties and are entitled to recover attorney fees pursuant to 42 USC 1988, and that the amount requested is reasonable.

Accordingly, the Court awards attorneys' fees in the amount of $119,031.25 to the moving party.

Counsel for plaintiff is to prepare the order.

Notice is waived.

SUPERIOR COURT OF THE
STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

Filed March 21, 2001
Case No. SC 019970

TOM STANLEY and DAROLD SHIRWO,

Plaintiffs,

—vs.—

LOCKHEED, a corporation; LOCKHEED INFORMATION MANAGEMENT SERVICES, a corporation; PRWT, an unknown business entity; DOES I through 300,

Defendants.

JUDGMENT

This action came on regularly for trial on August 21, 2000 in Department J of the Superior Court, the Honorable Lorna Parnell Judge presiding; the plaintiffs appearing by attorney Charles J. Fleishman and the defendants appearing by attorney Patrick McAdam of the law firm of Iverson, Yoakum, Papiano & Hatch, and attorney Frederick B. Hayes, of the law firm of Bradley & Gmelich.

A jury of 12 persons was regularly impaneled and sworn. Witnesses were sworn and testified. After hear-

ing the evidence and arguments of counsel, the jury was duly instructed by the Court and the case was submitted to the jury with directions to return a verdict on special issues. The jury deliberated and thereafter returned into court on August 30, 2000 with its verdict as follows:

Special Verdict Form

Question No. 1:

Did an economic relationship exist between the plaintiffs and third parties containing a probable future economic benefit or advantage to the plaintiffs?

Yes _X_ No ___

If you answer question number 1 "yes," please answer question number 2.

If you answer question number 1 "no," please answer question number 6.

Question No. 2:

Did the defendant know of this economic relationship?

Lockheed IMS Yes _X_ No ___

PRWT Yes _X_ No ___

If you answer "yes" as to any defendant, please answer question number 3.

If you answer "no" as to both defendants, please answer question number 6.

Question No. 3:

For any defendant that you answered "yes" in response to question number 2, did such defendant intentionally engage in wrongful conduct designed to interfere with or disrupt the relationship?

Answer "Yes" or "No" as to that or those defendant(s).

Lockheed IMS	Yes X	No ___
PRWT	Yes X	No ___

If you answer "yes" as to any defendant, please answer question number 5.

If you answer "no" as to all defendants, please answer answer question number 6.

Question No. 5:

For any defendant that you answered "yes" in response to question number 4, did such defendant reasonably and in good faith believe it was acting by authority of a valid order from the City of Los Angeles?

Answer "Yes" or "No" as to that or those defendant(s).

Lockheed IMS	Yes ___	No X
PRWT	Yes ___	No X

Please answer question 6.

Question No. 6:

Were the acts of the defendant intentional?

Answer "Yes" or "No" as to each defendant.

Lockheed IMS Yes X No ___

PRWT Yes X No ___

If you answer "yes" as to any defendant, please answer question number 7.

If you answer "no" as to both defendants, please have the foreperson sign, date and return this special verdict form.

Question No. 7:

For any defendant that you answered "yes" in response to question number 6, were the acts of such defendant the legal cause of a deprivation of plaintiffs' property interest under the United States Constitution?

Answer "Yes" or "No" as to that defendant.

Lockheed IMS Yes X No ___

PRWT Yes X No ___

If you answer "yes" as to any defendant, please answer question number 8.

If you answer "no" as to all defendants, please have the foreperson sign, date and return this special verdict form.

Question No. 8:

For the defendant that you answered "yes" in response to question number 7, did the defendant reasonably and in good faith believe it was acting by authority of a valid order from the City of Los Angeles?

Answer "Yes" or "No" as to that defendant.

Lockheed IMS	Yes ___	No X
PRWT	Yes ___	No X

Thereafter, the case was submitted to the jury with directions to return a verdict on additional issues. The jury deliberated and thereafter returned into court on August 30, 2000 with its verdict on the additional issues as follows:

Question No. 1:

What amount of financial loss, if any, do you find that plaintiffs sustained which caused by the defendants' conduct?

$66,000.00

Question No. 2:

Do you find by clear and convincing evidence that that there was malice or oppression in the conduct of Lockheed Information Management Services ("Lockheed IMS") upon which you base your finding of liability?

___ Yes

X No

As set forth more fully in its ruling of January 26, 2001, the court feels bound by the "law of the case" doctrine to hold that plaintiffs have established their "civil rights" cause of action. Accordingly,

IT IS ORDERED, ADJUDGED, AND DECREED, that plaintiffs Tom Stanley and Darold Shirwo have and recover from defendants Lockheed Information Management Systems, and PRWT, jointly and severally, the sum of $66,000.00, together with costs and disbursements in the amount of $ _____.

Dated: March 21, 2001

LORNA PARNELL
LORNA PARNELL
JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

DATE: January 26, 2001

HONORABLE LORNA PARNELL, JUDGE

M. BRYANT, Deputy Sheriff

DEPT. WEJ

G. TAPANES, DEPUTY CLERK

ELECTRONIC RECORDING MONITOR

NONE, Reporter

1:30 pm

SC019970

TOM STANLEY and DAROLD SHIRWO

—VS—

LOCKHEED IMS *et. al.*

Plaintiff Counsel N/A

Defendant Counsel N/A

NATURE OF PROCEEDINGS:

COURT ORDER RE PLAINTIFFS' CIVIL RIGHTS CAUSE OF ACTION

The prior procedural history of this case is set forth by the Court of Appeal in its opinion dated February 25, 1998. According, to the Court of Appeal, the appellants (plaintiffs herein Tom Stanley and Darold Shirwo) appeared for trial "on their third and fourth amended complaints by which they alleged causes of action for 'interference with prospective economic advantage,' and 'violation of civil rights.' That action was originally tried by another judge of this Court who granted a non-suit in favor of all defendants. That trial court's ruling was affirmed as to the City defendants and reversed as to the Lockheed defendants by the Court of Appeal. In its opinion, the Court of Appeal found that all of the "city defendants"—that is, the City of Los Angeles and various of its employees—were immune from liability either individually or as part of an alleged "conspiracy." However, the Court of Appeal rejected the contention that the Lockheed defendants were immune. In the words of the Court of Appeal, the judgment of the trial court was reversed as to the Lockheed defendants and "remanded with each of appellant's two causes of action reinstated."

Under the "law of the case" doctrine, this Court is bound by the legal determinations of the Court of Appeal. The

two causes of action against the Lockheed defendants—intentional interference with prospective economic advantage, and violation of civil rights—then came to jury trial before this Court. As to the cause of action for violation of civil rights, by agreement of counsel, the jury was to determine, inter alia, whether the action of the Lockheed defendants was a cause of injury, damage, loss, or harm to the interests of the plaintiffs. The jury found in favor of plaintiffs on that issue, and on all other issues presented to it as to liability on each of the two causes of action. Counsel stipulated that the actions of the Lockheed defendants were done "under color of law." Counsel also agreed that, if the jury's special verdict was in favor of the plaintiffs on the questions pertaining to the civil rights cause of action, it was for the Court to determine, as a matter of law, whether the "interest" of the plaintiffs was a "property" or "liberty" interest protected by the United States Constitution. The issue is of significance here because, although plaintiffs prevailed on their cause of action for intentional interference with prospective economic advantage and obtained an award of damages, plaintiffs would not be entitled to recover their attorney's fees incurred in their successful prosecution of this action unless they prevailed on their civil rights cause of action.

Section 1983 of Title 42 of the U.S. Code, the basic section defining civil rights actions, provides, inter alia, as follows: "Every person who, under color of [law] . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law. . . ." The Fourteenth Amendment to the United States Constitution protects individuals against the deprivation of life, liberty, or property without due pro-

cess of law. Section 1988 provides that attorney's fees can be awarded to a plaintiff who prevails on an action under Section 1983.

As noted earlier, the Court of Appeal reinstated (as to the Lockheed defendants) EACH of plaintiffs' two causes of action. Although it is not entirely clear from the Court of Appeal opinion, this Court interprets the Court of Appeal opinion to mean that the causes of action for intentional interference with prospective economic advantage and for violation of civil rights were each reinstated. The nature of the defendants' activities which provided the basis for plaintiffs' lawsuit are described with some detail in the Court of Appeal opinion. The Court of Appeal opinion also discusses in some detail the elements of the cause of action for intentional interference with prospective economic advantage. However, unfortunately, the Court of Appeal opinion does not discuss or analyze the separate elements of the civil rights cause of action. But, the non-suit having been found by the Court of Appeal to have been granted erroneously by the original trial judge, the matter was reinstated and remanded. This Court (which was not the original trial court and did not have the benefit of handling the case from the beginning) is thus placed in the awkward position of trying to interpret the meaning and effect of the Court of Appeal opinion. As this Court reads and interprets the Court of Appeal opinion, this Court feels bound by the law of the case doctrine to hold that plaintiffs have established their civil rights cause of action. This Court does so hold with some considerable trepidation.

That having been said, the following is what would be this Court's legal analysis if this Court were writing on an open slate, and were to decide the issue (of whether the injury which plaintiffs alleged they suffered by the

actions of the Lockheed defendant was to a constitutionally protected liberty or property interest) independently for the first time. This is a very difficult issue. The Court has received some briefing from the parties on this issue, and has conducted its own substantial independent research on the issue. Unfortunately, no case cited by the parties or found by the Court in its independent research presents facts similar to the facts presented by the instant case.

Numerous decision of the United States Supreme Court have analyzed what constitutes, or does not constitute, a constitutionally protected "property" or "liberty" interest. As that Court has noted in Board of Regents v. Roth, 408 U.S. 564 (1972): " 'liberty" and "property" are broad and majestic terms. They are among the 'great constitutional concepts . . . purposely left to gather meaning from experience. . . . They relate to the whole domain of social and economic fact. . . .' Id. at 572. Such property interests extend well beyond actual ownership of real estate, chattels, or money.

Likewise, the "liberty" guaranteed by the constitution "denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, and generally to enjoy those privileges long recognized as essential to the orderly pursuit of happiness by free men. . . . There can be no doubt that the meaning of 'liberty' must be broad indeed." Id. at 573. Yet, the Supreme Court has at the same time observed certain boundaries "for the words 'liberty' and 'property' . . . must be given some meaning." Id. at 573.

In recognizing the tension between the broad expanse of the concepts of liberty and property and the necessity of giving such concepts "some meaning," the Supreme

Court has held that a person has a liberty interest in being able to practice a profession, but that, at the same time, there is usually no liberty or property interest in a particular job within that profession. Denial of the right to a particular job without a foreclosure on the freedom to take advantage of other employment opportunities does not constitute a civil rights violation. Id. at 574. Conn and Najera v. Gabbert, 526 U.S. 286, 292 (1999). Further, as noted by the Supreme Court in Conn and Najera v. Gabbert, supra at 293-94, the injury must be to a liberty or property interest of the attorneys (who are the plaintiffs), and not to that of their clients or prospective clients.

In the present case, the action of the defendants did interfere with plaintiffs being able to represent certain clients and potential clients with respect to parking citations issued by the City, but such actions did not prevent plaintiffs from practicing their profession of law or from seeking to take advantage of other employment opportunities within the legal profession.

Given the parameters of the "liberty" or "property" interest set forth by the United States Supreme Court, if this court were deciding the issue in the first instance, this Court would hold that the injury to the plaintiffs which was caused by the actions of the Lockheed defendants was not to a fundamental "liberty" or "property" interest protected by the Fourteenth Amendment to the United States Constitution. Thus, plaintiffs would not prevail on their civil rights cause of action, although they would still obviously prevail on their cause of action for intentional interference with prospective economic advantage.

Counsel for plaintiffs is to prepare an appropriate judgment, serve it upon opposing counsel, and lodge it with the Court.

A true and correct copy of this minute order is sent VIA U.S. Mail this date to the following:

CHARLES J. FLEISHMAN
8383 WILSHIRE BLVD., SUITE 1030
BEVERLY HILLS, CA. 90211

PATRICK MCADAM
INVERSON, YOAKUM, PAPIANO & HATCH
624 S. GRAND AVE., 27TH FLOOR
LOS ANGELES, CA. 90017

FREDERICK B. HAYES
BRADLEY & GMELICH
655 N. CENTRAL AVE., 17TH FLOOR
GLENDALE, CA. 91203

DAROLD M. SHIRWO
8484 WILSHIRE BLVD., SUITE 605
BEVERLY HILLS, CA. 90211

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

DATE: August 30, 2000

HONORABLE LORNA PARNELL, JUDGE

M. BRYANT, Deputy Sheriff

DEPT. WEJ

G. TAPANES, DEPUTY CLERK

ELECTRONIC RECORDING MONITOR

W. SCHRIVER #7271, Reporter

9:00 am

SC019970

TOM STANLEY (X) DAROLD SHIRWO (X)

—VS—

LOCKHEED IMS *et al.*

Plaintiff Counsel	Charles J. Fleishman (X) (323) 653-9772
Defendant Counsel	Patrick McAdam (X) (213) 624-7444
	Frederick B. Hayes (X) (818) 243-5200

NATURE OF PROCEEDINGS:

retained and maintained at their respective offices pending final determination of this action, including time for motions and appeal.

The jury is thanked and discharged.

OUTSIDE THE PRESENCE OF THE JURY: Court and counsel discuss setting for hearing before the Court the issue of whether the conduct of defendants constitute a violation of the due process. The hearing is set for October 20, 2000 at 09:00 a.m. in this department. Briefs are to be filed and served by September 29, 2000, and any replies thereto are to be filed and served no later than October 06, 2000.

Counsel stipulate that the judgment shall be prepared after the final determination by the Court on the above legal issue.

Notice is waived.

[LETTERHEAD OF PARKING TICKET DEFENDERS]

Retainer Agreement

CLIENT (the undersigned) hereby retains ATTORNEY (PARKING TICKET DEFENDERS) to represent CLIENT in the defense of parking ticket offenses issued by the City of Los Angeles, USC, UCLA, CSUN, Los Angeles City College, Pierce College and Valley College.

ATTORNEY will represent CLIENT on parking ticket offenses only if CLIENT presents to ATTORNEY the original parking ticket citation, or a true and correct legible copy thereof, or the courtesy mail notice of the parking ticket citation, or a true and correct legible copy thereof and a sufficient sum of money to pay the bail of the citation.

ATTORNEY will only provide legal service through an original trial of the said citation.

ATTORNEY will not advance any monies on behalf of CLIENT as they would relate to the said parking ticket violation(s).

ATTORNEY will be entitled to one half (50%) of all monies refunded to CLIENT before or after a trial on the parking ticket citation(s). ATTORNEY will not be entitled to any other fee for this service.

CLIENT further authorizes ATTORNEY to appear on the CLIENT'S behalf in any matters of the parking ticket violation(s) and CLIENT waives notice of any such hearings.

CLIENT acknowledges that ATTORNEY has made no guarantees, warranties or representations concerning the outcome of the disposition of the parking ticket violation(s).

CLIENT further agrees that should any monies posted with the court as and for bail of the said parking ticket

violation(s) be returned to CLIENT instead of ATTORNEY, then CLIENT will immediately reimburse ATTORNEY for ATTORNEY's portion of the bail amount and if CLIENT fails to do so and legal action is initiated then CLIENT agrees to pay all reasonable expenses incurred by ATTORNEY in recovering monies due to ATTORNEY (including any reasonable attorney's fees).

CLIENT further acknowledges that CLIENT is the party in interest in the parking ticket violation(s) presented to ATTORNEY.

ATTORNEY may utilize the services of other attorneys in litigation of the subject parking ticket violation(s).

ATTORNEY will promptly advise CLIENT of the outcome of the trial of the subject parking ticket violation(s) and will promptly refund CLIENT'S portion of the bail money upon ATTORNEY receiving it from the court.

Dated: November 13, 1991

UNITED PARCEL SERVICE
CLIENT

By: [ILLEGIBLE]

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

B100699

(Super. Ct. No. SC0199970)

Filed February 25, 1998

TOM STANLEY *et al.*,

Plaintiffs and Appellants,

—v.—

LOCKHEED *et al.*,

Defendants and Respondents.

APPEAL from a judgment of the Superior Court of Los Angeles County, James E. Satt, Judge. Affirmed in part, reversed in part.

Charles J. Fleishman for Plaintiffs and Appellants.

James. K. Hahn, City Attorney, Jerry Montgomery, Assistant City Attorney, Teresa Lujan, Deputy City Attorney, Iverson, Yoakum, Papiano & Hatch, Patrick McAdam, and Frederick B. Hayes for Defendants and Respondents.

This case was transferred to this division from another division on June 26, 1997, by order of the Chairperson of the Judicial Council.

This appeal is from the judgment entered on February 23, 1996, in favor of defendants following the grant of the defendants' motions for nonsuit after the opening statement and presentation of evidence by appellants.

FACTS

Appellants Tom Stanley and Darold Shirwo formed a partnership in July 1991, operating under the fictitious name of Parking Ticket Defenders (PTD). The partnership's business was defending parking tickets issued by the City of Los Angeles (hereafter "City") to fleet operators and processed by Lockheed Information Management Services (LIMS) under contract with the City, in what was known as the Fleet Operation Program (FOP). PRWT was apparently a subsidiary of LIMS but who or what it is and its function is not explained in the record. Examples of fleet operators include: Federal Express, United Parcel Service, Hertz, Avis Rent-A-Car, Midway Rent-A-Car, Coca-Cola, and Pepsi-Cola.

Fleet operators who participated in this fleet operation program provided the Department of Transportation of the City (DOT) with a list of all vehicles that the fleet operator owned. Every month, the DOT would send to each program participant a printout listing of all of the parking tickets which were issued to the participant's vehicles during the month. From this printout, each participant could decide whether to pay a particular ticket or to contest it. PTD entered into contract agreements with several of these fleet operators by which it was agreed that the fee to PTD for handling their tickets would be one-half of all bail monies which were refunded on a

parking ticket as a result of the efforts of PTD. They received no compensation if they were not successful in reducing the amount charged on the ticket.

When PTD received checks from their clients as bail on the parking tickets, their employee, Richard Levinson, would file the tickets with the City's parking violations bureau (PVB) and seek a trial date. The business started somewhat slowly and grew to the point that they were receiving as many as 200 tickets at a time. They would request that each of these tickets be set on the same date, at the same time, in the same court. The PVB would honor Levinson's request and set the tickets for trial as requested.

The PVB was operated by LIMS which had entered into a contract with the City to administer the collection of ticket fines. A person who received a parking ticket could handle it by either mailing the fine in to the PVB, paying the fine at a PVB office or going to a PVB office, posting bail on the citation, and receiving a trial date in the municipal court.

Appellants filed their original complaint for damages on September 30, 1992. After several modifications due to successful demurrers and motions by respondents, appellants appeared for trial on their third and fourth amended complaints by which they alleged causes of action for "interference with prospective business advantage" and for "violation of civil rights." In the body of the third amended complaint (par. 17), appellants alleged that each defendant "acted as part of a plan and conspiracy in doing . . . the acts. . . ." Answers were deemed filed and all allegations were deemed denied. After appellants' opening statement, respondents moved for a nonsuit.

The court granted the nonsuit as to appellants' allegations that LIMS and PRWT engaged in conduct that

constituted the tort of intentional interference with appellants' prospective economic advantage as to Hertz, Avis, DHL, and Midway and denied the other nonsuit motions. The trial proceeded to the jury to determine the allegations that the alleged refusal by LIMS and PRWT to set for trial certain UPS parking tickets constituted the tort of intentional interference with prospective economic advantage and that LIMS and PRWT were part of an alleged conspiracy. After appellants presented their evidence, the trial court, on January 4, 1996, granted a nonsuit which was entered on February 23, 1996.

The deputy city attorneys who prosecuted the parking tickets were Ellen Sarmiento, Dan Jeffries, Suzanne Tom, Janice Chieffo, and Rosemary Chavez. The DOT was managed by S. Edwin Rowe. The administrator in charge of the DOT's Office of Parking Management was Robert Yates. Robert Lum, Deborah Sanders, and Jay Carsman were employees of that department.

CONTENTIONS

Without specific citation to the record, appellants make two contentions. First, they assert that "the acts contained in paragraphs 11 and 12 of the complaint are the actionable tortious acts . . . those acts consist of individual defendants contacting clients and prospective clients of the plaintiffs and, through threats and inducements dissuading the clients from doing business with the plaintiffs and actions of the Lockheed defendants refusing to set plaintiffs' clients' tickets for trial." Appellants also contend that "these actions of the various defendants are, however, evidence of their joining into a conspiracy to put the plaintiffs out of business and evidence of malice." Appellants, without elaboration say they were: "arbitrarily prevented from participating in

the representation of corporate clients in parking ticket cases"; the victims of the city attorney "policy of singling out plaintiff's clients for special treatment, the bail money received from DHL was returned to them and plaintiffs were unable to represent DHL in any manner."

City contends that all of the city respondents, City of Los Angeles, and employees Rowe, Lum, Sanders, Hahn, Sarmiento, Jeffries, Chavez, Tom, Chieffo, Carsman, and Yates, are immune from liability pursuant to sections 820.2, 820.4, 821.6, and 815(2) of the Government Code and their conduct is privileged pursuant to section 47(b) of the Civil Code.

City contends the DOT respondents, Lockheed, LIMS, and PRWT were acting in a quasi-judicial capacity in assisting the city respondents to prosecute the parking citations. They fall within the discretionary immunity of Government Code sections 820.2 and 820.4, because they were enforcing provisions of the Vehicle Code.

City argues that the creation of the FOP and the requirements for participation in the program and how it was operated was completely within the discretion of the DOT. All communications made by the DOT respondents were an integral part of their official functions of enforcing parking laws, parking management, and traffic control, and were therefore, absolutely privileged. In addition, since their conduct was not wrongful, no cause of action can be stated for intentional interference with economic advantage.

STANDARD OF REVIEW

Code of Civil Procedure section 581c provides that after the plaintiff has completed his opening statement or the presentation of evidence in a trial before a jury, the defendant may move for nonsuit. (Subd. (a).) If the evi-

dence presented or to be presented supports the granting of the motion as to any issues, the court shall grant the motion as to those issues. (Subd. (b).)

The court, in ruling on a motion for nonsuit, must accept all evidence favorable to the plaintiff as true and must disregard all conflicting evidence. *(Carson v. Facilities Development Co.* (1984) 36 Cal.3d 830, 838-839.) On appeal, the reviewing court will sustain the judgment if " " 'interpreting the evidence most favorably to plaintiff's case and most strongly against the defendant and resolving all presumptions, inferences and doubts in favor of the plaintiff a judgment for the defendant is required as a matter of law .' " " *(Castaneda v. Bornstein* (1995) 36 Cal.App.4th 1818, 1825; *Mason* v. *Peaslee* (1959) 173 Cal.App.2d 587, 588.)

DISCUSSION

Counsel has not stated with particularity the evidence appellants presented to the jury with appropriate citations to the record. Our independent perusal of the reporter's transcript of the trial leads us to the conclusion that the nonsuit was error. We set forth here some of the testimony that was presented by the appellants to the jury which was, in our view, sufficient for appellants to avoid a nonsuit.

The first time that the appellants appeared in court on behalf of a client, the parking tickets went before a judge pro tem and there was no city attorney present in court. The second time, a judge was present as were parking enforcement officers. The third time appellants appeared, there were supervising city attorneys, a judge, and parking enforcement officers. The city attorney would not agree to settle any of the tickets. Appellants had a conversation with City Attorney Chavez who told

them that she would seek the highest enhancement possible on each ticket because they were litigating the tickets. Witness appellant Shirwo testified that they were told by the city attorney that the tickets they were appearing on were being enhanced because his firm was representing the fleet clients. The enhancements were on the first violations as well as on others. "We [the city attorney) want this $13 fine increased because they are being represented by Stanley and Shirwo." As a result of these tactics, appellants had to advise and drop their clients. Violations of Vehicle Code section 5204 required an appearance before a bench officer in order to be resolved. The usual settlement was to dismiss these license tab violations without a fine upon a showing that the tabs had been purchased. DOT made an exception to this rule for fleet operators Midway, Hertz, and Avis but not for the general public only after appellants stopped representing those fleet operators. "Our clients were the only ones she sought enhancements against."

Robert James Wiley, the office manager for UPS, testified that his company averages from $8,000 to $12,000 each month in tickets and thai they owed some $40,000 in fines and penalties as a result of the approximately 500 drivers they had on the streets daily. He wanted to join the FOP and talked to Deborah Sanders. He was told "if we choose to use Parking Ticket Defenders, then we would not be able to participate in the Fleet Operations Program." Someone higher up had told her it would not be allowed.

Richard Levinson, the administrator in appellants' office, indicated that he handled the tickets at the PVB. When the business started in July, it was possible to post bail with the PVB at the Van Nuys office with only a license plate number or ticket number. This procedure changed drastically in November 1991. He was told that

copies of original citations would not be accepted and that it was necessary to post the original citation in order to post bail and set trial. This was impossible because so often the original was lost. In addition, they refused to accept their own Lockheed printout of the parking tickets because downtown said not to accept it. Mr. Brueggen of Hertz said that Hertz would not do business with appellants because he received a phone call from Deborah Sanders. She told him that if he took on appellants, he would have to be careful about that because a $20 ticket could go to $250. Amy Smith Woodley of Midway said the same thing.

Robert Yates, the DOT general manager, testified that yes, Lockheed did send the ticket printouts and delinquency notices. The letter that was signed by him and sent to Avis was actually written by Deborah Sanders who administered the FOP. The letter stated the following: "It has come to my attention that Grand Avis has hired Parking Ticket Defenders, Inc., to contest 120 parking citations. . . . However, we strongly believe that your current actions are not consistent with being a responsible corporate citizen in the city of Los Angeles."

Other evidence which was presented, although contested, was that DOT would administratively suspend tickets for people who would stop using appellants' services. In particular, Midway Rent-A-Car should have additional Vehicle Code section 5204 violations administratively suspended so Midway could fire appellants. UPS had $40,000 in fines reduced to $18,000 after UPS fired appellants. Also, the PVB negotiated settlements with parking violators but would not negotiate with appellants for their clients.

The City collected 80 to 90 million dollars in parking fines in fiscal year 1991-1992. Yates said that if appellants were to be allowed to defend people on parking

tickets, that Would have a significant monetary impact. It was for this reason DOT sought the help of the city attorney's office to appear in court against appellants.

Amy Smith Woodley of Midway testified that her company received 100 to 120 tickets per month at a cost of from $18 to $55. On October 9, 1991, she received a call from Deborah Sanders and that was followed up by a letter from Robert Yates. Right after that, Levinson said to them that appellants would stop doing business with them because they did not want problems for their clients. Janice Chieffo, a deputy city attorney, testified that she sought enhancements only on the parking tickets for the clients of appellants and not for anyone else.

Appellant Shirwo testified that he, on a number of occasions, asked Deputy City Attorneys Sarmiento, Chavez, and Chieffo if he could negotiate settlements on parking tickets. They each said that they would try for the $250 maximum on every ticket of his, irrespective of the violation and even if he wanted to forfeit bail.

In summation, the evidence presented which is most favorable to the appellants is that the city attorney's office treated appellants differently than other counsel and made it impossible for them to represent their clients on parking tickets. The administrators and employees of the FOP, Robert Yates and Deborah Sanders engaged in activity including making phone calls and sending correspondence to companies doing business with the appellants. The objective of this activity was to prevent appellants from being able to represent in court any company which had outstanding large numbers of parking tickets.

Government Code[1] section 815.2, subdivision (b), provides that "a public entity is not liable for an injury

---

[1] Unless otherwise specified, all section references are to the Government Code.

resulting from an act or omission of an employee of the public entity where the employee is immune from liability." Accordingly, the City cannot be vicariously liable for any wrongful acts alleged to have been committed by any public employee who is immune from liability. (*Kayfetz v. State of California* (1984) 156 Cal.App.3d 491, 496.) Section 821.6 provides that: "A public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause." It is undisputed that Ellen Sarmiento, Dan Jeffries, Suzanne Tom, Janice Chieffo, and Rosemary Chavez were deputy city attorney public employees of the City who were among those who processed and prosecuted the parking tickets issued by the City. Their acts, as described above, of refusing to settle tickets, of seeking maximum enhancements on every ticket even in cases where bail was to be forfeited, and more, were clearly committed while they were in the course and scope of their employment. From appellants' point of view, their treatment of his clients and his office may be viewed as wrongful and even malicious. From an objective vantage point, however, each of the acts was within the law and was committed as incidental to their job of prosecuting parking tickets issued by the City. In fact, since acts such as determining the suitability of requesting or not requesting an enhancement involve some measure of choice and may be said to be highly subjective and discretionary and to involve a basic policy decision, section 820.2 provides immunity. That section provides: "[A] public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of discretion vested in him, whether or not such discretion be abused." Mere discretion does not

bring the acts within the immunity provisions of 820.2. When, however, the discretionary acts involve basic policy decisions which are in the arena of an exercise of government administration, this discretionary activity is protected by immunity provision of section 820.2. (*Johnson v. State of California* (1968) 69 Cal.2d 782, 793; *Ronald S.* v. *County of San Diego* (1993) 16 Cal.App. 4th 887, 896-897.) Contrary to the assertion of respondents, the manner in which parking tickets are prosecuted is a highly subjective decision making process that cannot be said to be a ministerial act. Discretionary[2] decisions of a coequal branch of government even if wrong are beyond the proper scope of court review. (*Id.* at p. 897.) Accordingly, we hold that the judgment by the trial court as to the deputy city attorneys and the City was correct since sections 815.2, subdivision (b), and 821.6 (see *Amylou R.* v. *County of Riverside* (1994) 28 Cal.App.4th 1205, 1210-1211) and section 820.2 immunize the employees and the City. S.E. Rowe, Robert Yates, Robert Lum, Deborah Sanders and Jay Carsman were, likewise, public employees of the DOT of the City. They too are entitled to immunity for the reasons stated.

Although the city attorney himself is an elected official and not an employee, he is likewise immunized for two reasons. First, the immunity afforded the employees who work under his direction prevents the imputation of liability to him. Second, because of important policy considerations, the rule has "[b]ecome established that government officials are not personally liable for their discretionary acts within the scope of their authority even though it is alleged that their conduct was mali-

---

[2] "Generally speaking, a discretionary act is one which requires the exercise of judgment or choice." (*Burgdorf* v. *Funder* (1966) 246 Cal.App.2d 443, 449.)

cious. [Citations.] The subjection of officials, the innocent as well as the guilty, to the burden of a trial and to the danger of its outcome would impair their zeal in the performance of their functions, and it is better to leave the injury unredressed than to subject honest officials to the constant dread of retaliation. [Citation.]" *(Lipman v. Brisbane Elementary Sch. Dist* (1961) 55 Cal.2d 224, 229.)

Any defendant who was not a public employee is not protected by the immunity and privilege statutes. The argument that they are quasi-judicial officers of the court is specious. Accordingly, if the evidence presented to the jury was sufficient to establish by a preponderance of the evidence that: (1) an economic relationship existed between the plaintiffs and third parties containing a probable future economic benefit or advantage to plaintiff; (2) defendants knew of the relationship; (3) intentionally engaged in wrongful conduct designed to interfere with or disrupt this relationship; (4) and did actually interfere with or disrupt the relationship; (5) causing plaintiffs damage, then they have established a cause of action. (See *Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376, 388-389; *Seaman's Direct Buying Service, Inc. v. Standard Oil Co.* (1984) 36 Cal.3d 752, 765, overruled on other grounds in *Freeman & Mills, Inc.* v. *Belcher Oil Co.* (1995) 11 Cal.4th 85; *Buckaloo v. Johnson* (1975) 14 Cal.3d 815, 827.) The wrongful conduct definition that we here adopt is that conduct is wrongful where a defendant acted out of " 'the realm of legitimate business transactions.' " (*Arntz Contracting Co. v. St. Paul Fire & Marine Ins. Co.* (1996) 47 Cal.App.4th 464, 478.) The acts of communicating with the clients or prospective clients of a law firm with the express intent of causing the client to either fire or not hire the law firm is outside of the realm

of legitimate business transactions and is therefore wrongful within the meaning of *Della Penna*. The same is true of any act of wilful refusal to set a case for trial upon legitimate request and any wilful refusal to accept bail or to improperly enhance bail. Intent may be established by inference as well as by direct proof. The jury therefore could infer culpable intent from conduct of any respondent which was substantially certain to interfere with the business or contract relations of appellants and their clients. *(Seaman's Direct Buying Service, Inc.* v. *Standard Oil Co., supra,* 36 Cal.3d at p. 767.)

Appellants were partners, not a corporate entity. They entered into contracts under the fictitious name of Parking Ticket Defenders. Partners may sue in their own names for torts allegedly committed against the partnership. (See 9 Witkin, Summary of Cal. Law (9th ed. 1989), Partnership, § 10, p. 409.) The nonsuit which was raised by the trial judge on his own motion and granted on the theory that appellants were not the proper parties was error. It was a simple matter of amendment of the complaint to conform to proof. It was evident to all, not disputed, and easily proved that the appellants were, in fact, the parties who were suing in the fictitious business name of Parking Ticket Defenders.[3]

Respondents cite section 810.2 and the case of *City of Los Angeles v. Vaughn* (1961) 55 Cal.2d 198, 202, in support of the argument that Lockheed and PRWT are public employees and therefore are entitled to immunities. Respondents make no argument to persuade us that the *Vaughn* case has applicability to the case at bench and do not cite the provisions of the code section or

---

[3] Whether or not it is proper or legal for lawyers who offer legal services to enter into a contract under a dba when they are a partnership is not an issue raised in this appeal and is irrelevant to this appeal.

argue its applicability. They, instead, refer us to their lengthy trial brief without citation to any specific section and without analysis. Accordingly, we do not pass judgment on the contention. (*Cf. People v. Dougherty* (1978) 138 Cal.App.3d 278, 282-283.)

Conspiracy does not itself constitute a separate tort. Liability is imposed on that theory through agency. (*Citizens Capital Corp. v. Spohn* (1992) 133 Cal.App.3d 887, 889.) Therefore, the immune City employees cannot have been a part of any conspiracy.

DISPOSITION

The judgment is affirmed as to the City of Los Angeles and as to each of the City employees including the city attorney. The judgment is reversed as to each of the other respondents. The case is remanded with each of appellants' two causes of action reinstated.

Appellants are to recover costs.

DUNN, J.*

We concur: SPENCER, P.J.
ORTEGA, J.

---

* Assigned by the Chairperson of the Judicial Council.

Section 1983 of Title 42, United States Code, as amended effective December 29, 1979, by Pub.L. No. 96-170, § 1, 93 Stat. 1284 provides the following:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Section 1988(b) of Title 42, United States Code, as amended effective September 22, 2000, Pub. L. 106-274, § 4(d), 114 Stat. 804, provides the following:

> In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C.A. § 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C.A. § 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C.A. § 2000cc et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000d et seq.], or section 13981 of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

Section 40200.4 of the California Vehicle Code, added Ch. 939, Stats.1986, effective January 1, 1987, provided the following:

> If a county or court within a county has been processing notices of parking violations and notices of delinquent parking violations for a city, a district, or any other issuing agency prior to January 1, 1987, and the court elects to discontinue and transfers that processing, the issuing agency and the county may provide in an agreement for the orderly transfer of the processing activity. The agreement shall permit the county or court to phase out, and the issuing agency to phase in, or transfer, personnel, equipment and facilities that may have been acquired or need to be acquired in contemplation of a long-term commitment to process notices of parking violations and notices of delinquent parking violations for the issuing agency under this article.
>
> If the court elects to transfer the processing function, the court shall authorize a representative of the issuing agency to receive parking penalties for notices of parking violations and notices of delinquent parking violations issued within the agency's jurisdiction. The court shall not transfer the processing function to the Department of the California Highway Patrol or a sheriff's office. The clerk of the court is authorized to receive parking penalties resulting from notices of parking violations and notices of delinquent parking violations issued by the Department of the California Highway Patrol or a sheriff's office and for any other area of the court's jurisdiction where the court has not transferred the processing function to the issuing agency.

Section 40200.5 of the California Vehicle Code, added Ch. 939, Stats. 1986, effective January 1, 1987, provided the following:

(a) Except as provided in Section 40200.2, an issuing agency may elect to contract with the county, with the municipal or justice court of competent jurisdiction, with a private vendor, or with any other issuing agency within the county, with the consent of that other entity, for the processing of notices of parking violations and notices of delinquent parking violations, prior to filing with the court pursuant to Section 40230.

(b) Any contract entered pursuant to subdivision (a) shall provide for distribution of amounts collected between the parties, except as otherwise provided in Section 40200.3 or this article.

Section 40215 of the California Vehicle Code, as amended Ch. 852, Stats. 1987, effective January 1, 1988, provided the following:

40215. (a) If the person served with a notice of parking violation or a notice of delinquent parking violation appears before the person authorized to receive a deposit of the parking penalty and contests the violation, the processing agency shall do either of the following:

(1) If the processing agency is satisfied that the violation did not occur or that the registered owner was not responsible for the violation, the processing agency shall cancel the notice of parking violation or notice of delinquent parking violation and make an adequate record of the reasons for canceling the notice.

(2) The processing agency shall set an arraignment date, or, if the person requests it, a trial date, and provide documentation to the court as specified by local rule. Except as the rules provide otherwise, the processing agency shall record the person's name, address, and driver's license number, obtain the person's signed, written promise to appear, and verify whether the person appearing has received a notice of parking violation conforming to Section 40202 or a notice of delinquent parking violation conforming to Sections 40207 and 40208. If the person appearing has not received the notice of delinquent parking violation, the processing agency shall serve the person with a notice of delinquent parking violation conforming to Sections 40207 and 40208. The processing agency shall assign a specific date and time as approved by the court for appearance by the person contesting the violation and shall then

file a complaint or a copy of the notice of delinquent parking violation, together with the signed promise to appear, with the court pursuant to Section 40230 within 15 days. The processing agency shall notify the registered owner or other person contesting the violation of the filing and the date and time for appearance in the same manner as provided in Section 40206. Thereafter, all proceedings shall be had by the court in the same manner as infraction violations of this code.

(b) If the processing agency has filed the notice of delinquent parking violation with the department for collection pursuant to Section 40220, the processing agency shall recall the notice by notifying the department that the notice of delinquent parking violation has been filed with the court and informing the department of the court file or docket number of the matter.